

REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of February 2, 2009 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Office is expressly authorized to charge any deficiencies or credit any overpayments to Deposit Account No. 14-1437.

Claim Rejections – 35 USC § 103

Claims 1-5, 7-8, 10-18, 20-21, and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application 2002/0144263 to Eldering, *et al.* (hereinafter Eldering '263) in view of U.S. Patent No. 6,006,197 to d'Eon, *et al.* (hereafter d'Eon) in view of U.S. Patent 6,067,525 to Johnson, *et al.* (hereinafter Johnson), in further view of applicant-admitted prior art (AAPA) or U.S. Patent 6,816,903 to Rakoshitz, *et al.* (hereinafter Rakoshitz), and further in view of U.S. Patent 7,185,353 to Schlack (hereinafter Schlack). Claims 1-5, 7-8, 10-18, 20-21, and 23 were rejected under 103(a) as being unpatentable over U.S. Published Patent Application 2002/0083442 to Eldering (hereinafter Eldering '442) in view of non-patent literature "Web Marketing through Oracle iMarketing" by Bellare (Oracle iMarketing), in view of Johnson, Rakoshitz and Schlack.

Although Applicants respectfully disagree with the rejections, Applicants have slightly modified the language of Claim 1 in an effort to even more clearly define the present invention. Applicants have added Claims 24-25. The claim amendment and added claims are fully supported by the original disclosure and no new matter has been introduced.

Aspects of Applicants' Invention

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by Claim

1, is a method of dynamically modifying an electronic campaign according to real time network conditions.

The method can include identifying available network capacity of a combined packet-switched and circuit-switched network comprising a plurality of distinct types of delivery network channels; and transmitting electronic content for the electronic campaign to consumers over the plurality of delivery network channels of the combined network according to a predetermined outbound transmission flow rate for the electronic campaign. The plurality of distinct delivery network channels can include at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with telephonic device, and at least one public network channel for communicating with a public Web site.

The method also can include receiving consumer responses associated with each of the plurality of delivery network channels used to transmit the electronic content; analyzing the received consumer responses and determining an effectiveness of the electronic campaign over each of the plurality of delivery network channels.

The method further can include selectively redirecting at least a portion of the electronic content from delivery network channels determined to be less effective to a delivery network channel determined to be more effective, and dynamically modifying said outbound transmission flow rate for said electronic campaign according to the determined effectiveness of the electronic campaign and the identified available network capacity.

See, e.g., Specification, page 12, line 16 to page 14, line 2.

The Claims Define Over The Prior Art

Eldering '263 concerns a method and apparatus for providing targeted advertisements to individual subscribers or groups of subscribers on a network. More

particularly, Eldering '263 concerns providing different advertisements to different customers or groups of customers.

In contrast, the present invention concerns dynamically modifying an electronic marketing campaign according to a monitored target audience response rate and network congestion resulting from the campaign in light of available network capacity and available bandwidth. For example, the rate at which the electronic content is transmitted over the network can be dynamically modified according to the determined effectiveness of the electronic campaign and the available capacity of the network. The rate at which the electronic content is transmitted can be dynamically increased over at least one delivery channel associated with at least a predetermined minimum percentage of consumer responses. Similarly, the rate at which the electronic content is transmitted can be dynamically decreased over at least one delivery channel which is not associated with at least a predetermined minimum percentage of consumer responses. At least a portion of electronic content can be redirected from one delivery channel to another delivery channel.

Clearly, the subject matter of Eldering '263 is totally different from the subject matter of the present invention. Eldering '263 does not at all concern modifying an electronic marketing campaign according to factors such as the network capacity and the audience response rate.

The Examiner cited Figs. 1, 5, 7 and paragraphs [0003]-[0004] and [0042]-[0050] of Eldering '263 as disclosing identifying available network capacity of a combined packet-switched and circuit-switched network comprising a plurality of distinct delivery channels, including at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with a telephonic device, and at least one public network channel for communicating with a public Web site; and transmitting electronic content for the electronic campaign to consumers over the plurality of delivery channels of the network according to a

predetermined outbound transmission flow rate for the electronic campaign, as recited in independent claims of the instant application.

It is noted that Eldering '263 only concerns delivering advertisements via a television service network. Antenna broadcast, analog cable, digital broadcast satellite (DBS), digital cable, switched digital video (SDV), etc. are different means for providing television service. They are not different types of delivering network channels in the sense of the present invention. The Virtual Path Identifier/Virtual Channel Identifiers (VPI/VCI) as shown in Fig. 5 and the nodes as shown in Fig. 7 represent different ad channels that deliver different groups of ads to different set-top boxes (STBs). These ad channels are part of the television service network and are not different types of delivering network channels in the sense of the present invention.

Eldering '442 discloses a method and apparatus for scheduling and inserting advertisements into a plurality of presentation channels in a television communications network in which the presentation channels contain the same programming, but different advertisements. Similarly, Eldering '442 also only concerns delivering advertisements via a television service network. The different channels of television programming are not the different types of delivering network channels in the sense of the present invention.

Therefore, neither Eldering '263 nor Eldering '442 concerns dynamically modifying an electronic marketing campaign according to factors such as the real time network capacity and the real time audience response rate. Further, neither Eldering '263 nor Eldering '442 discloses transmitting electronic content for the electronic campaign to consumers over a plurality of different types of delivery network channels, such as a private network, a telephonic network, and a public network, as in the present invention. Both Eldering '263 and Eldering '442 only utilize one type of delivery channel, namely a television programming service.

The other cited references do not make up for the deficiencies of Eldering '263 or Eldering '442 as discussed above.

It was asserted in the third paragraph on page 6 of the Office Action that in col. 1, lines 50-55, d'Eon teaches the step of "ascertaining which banners are and are not effective in causing a user to make a transactional decision," therefore, it would have been obvious to improve (modify) the campaign effectiveness by deleting the not effective banners and use only the effective banner in order to be profitable, i.e. increasing AD #1 while decreasing or deleting AD #2, as shown in Fig. 6.

However, it is noted that in the present invention, it is the effectiveness of the same electronic campaign over each of the plurality of delivery network channels that is analyzed, not the effectiveness of different campaigns over the same delivery channel as in d'Eon.

Oracle iMarketing also discloses measuring effectiveness of the Web banner advertisement and modifying the marketing campaign according to the measured effectiveness. Similar to d'Eon, Oracle iMarketing also does not disclose analyzing the effectiveness of the same electronic campaign over each of the plurality of delivery network channels as in the present invention.

Johnson discloses a sales force automation system which integrates computerized, intelligent automated salesperson support for multiple phases of the sales process. Various subsystems may be provided to facilitate the sales process which may include pre-sales lead generation, maximize time spent with the customer, effectively manage an order, ensure customer satisfaction and retain the customer for future sales. Also provided to support the phases of the sales process are additional tools, integrated in the system. The additional tools may include self management subsystems, sales management subsystems and training subsystems. See the Abstract. Fig. 3 of Johnson illustrates a lead generation component 102 of the system, which may include a kiosk module 302, a Web site module 304, a telemarketing module 306, etc. However, it is

noted that these modules are not the delivery channels for transmitting electronic content for the electronic campaign in the sense of the present invention. These modules may be installed at various sites for the purpose of providing sales information with or without a salesperson present and facilitating the connection of lead information that can be provided to the appropriate salesperson. See col. 11, lines 5-8.

Accordingly, the cited references, alone or in combination, fail to disclose or suggest each and every element of Claims 1 and 24-25. Applicants therefore respectfully submit that Claims 1 and 24-25 define over the prior art. Furthermore, as each of the remaining claims depends from Claim 1 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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